THE CIRCUIT COURT

FOR THE THIRD JUDICIAL CIRCUIT OF MICHIGAN
FAMILY DIVISION - JUVENILE

August 30, 2005

Michigan Supreme Court
Mr. Carl L. Gromek, SCAO
P.O. Box 30052
Lansing, MI 48909

Dear Justices:

We are writing to express the fundamental un-workability of changes proposed by ADM File 2004-42 to MCR 8.103 and others to improve timeliness, at least as it applies to Juvenile proceedings. The proposed rule changes seem to envision the Family Court hearing to adjudicate Out-of-Home Juvenile matters in front of it where possible within the 63 days mentioned in MCR 3.972 (A), but not more than 98 days. This is effectively a change in Court Rule from the time standard being a Guideline to a mandate of dealing with cases within 150% of the Guideline. Some of the bizarre circumstances frequently encountered in Juvenile Child Protection matters in Wayne County do not lend themselves to orderly, or speedy, resolution. Further, if put in force, the Administrative Order would also make impossible the achievement of goals for children set forth in Statute by the Legislature.

Current Service of Process resources available to the Third Circuit often do not deal well with the situations children's parents are in. Not just is a parent frequently absent or unknown, multiple parents may be absent or unknown, or there may be a series of Putative parents indicated under MCR 3.921(c)(1), each sequentially needing to be found and DNA tested. DNA testing currently takes about 8 weeks. Parents in Prisons are common and a particular problem, in that Prisons are not cooperative with Process Servers or service by Registered Mail (Return Receipt Requested), and sometimes not cooperative with a Guard serving the Prisoner and FAXing back Proof of Service. Multiple fathers in Prisons is not uncommon. When Substitute Service by Publication is approved after reasonable efforts at achievement or a showing of impracticability, it currently takes 7 weeks in Wayne County for Proof to reach the file. It is surprising how many parents claim Indian heritage, and under Federal law (ICWA) notice must be given and proof of that must make its way into the file, a 30 day process in Wayne County.

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The proposed Rule change seems to envision the Family Court adjudicating In-Care Juvenile matters before it where possible within the 63 days mentioned in MCR 3.972 (A), but in no event in less than 98 days. A large proportion of the Child Protection cases before the Third Circuit are dealt now with within the 63 day period, and a large number more are dealt with within 98 days. The only way to adjudicate 100% of In-Custody cases within 98 days would be to adjudicate those parents upon whom service is easy, and dismiss parents who are not easy to serve. These partially adjudicated cases would make achieving the Statutory goal of Permanence for a large number of Wayne County children impossible.

It is quite possible for procedure to make impossible or reverse policy goals set forth in Statute. Particularly in the US Congress, where the US Constitution allows the Congress more of a say in Court Rules, there is a rather impolite saying amongst Members to that effect.

During the 1980's and 1990's, the Michigan Legislature produced quite a bit of legislation concerned with facilitating Permanency for children in Child Protection matters, and required additional extensive use of Judicial Resources. This forcing of extensive use of Judicial resources was by a Legislature and Governor generally hostile to giving the Judiciary any argument that new Judicial resources were necessary.

The Legislature was reacting to concerns which were later further addressed by its third effort, the Binsfeld Commission in July 1996 and the Legislature by 1997 PA 163 to 172: the interests of the children to quickly have Permanence was paramount, as well as to have a safe & suitable home, and the interest of the children to quickly get on the road to becoming healthy, productive members of society themselves. If possible this was to be with their birth parents, but birth parent rights were not paramount. In the words of the Senate Fiscal Agency analysis of the "Binsfeld" legislation, the Commission's recommended legislation mandated "an aggressive up-front assessment of a child's needs, the severity of abuse, and the parent's ability to change . . ."

In 1988 the Legislature enacted and the Governor signed 1988 PA 224 (introduced in 1987 as House Bill 4642 by now-US Senator Debbie Stabenow and co-sponsored by now-Circuit Judges Thomas Power and Virgil Smith Jr.), an enormous multi-section bill, the purpose of which was to completely rework the Family Court. In it, the Legislature established that after a year of a child being in care, a parent's problems should with rare exceptions have been dealt with [see current MCL 712A.19A (particularly 1988 PA 224 sections 1 and 5, what is now subsections 1 and 6)], and if they had not, then barring an extraordinary finding, there must be a Trial on taking Permanent Custody, a distinct change from the prior practice.

The Legislature would not have forced Trial in this fashion in the 1988 legislation if it did not feel that close examination was necessary as to whether grounds were present, and that it felt grounds might well be found, and

that serious consideration should be given toward achieving Permanence by something other than continued foster care.

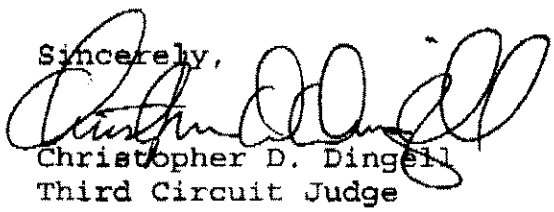
In 1994 the Legislature enacted and the Governor signed 1994 PA 264 (Senate Bill 725 of the 1993-94 session, with now-Circuit Judge Christopher Dingell as lead co-sponsor). This was another multi-section bill which, in order to be understood, has to be read at least as whole Sections, not as individual subsections. In the same act, the Legislature re-enacted all of the existing grounds for termination in **MCL 712A.19B** subsection (3), adding a new ground in subsection (3)(j), and added subsection (5) which requires Permanent Custody be taken if grounds are found, except under extenuating circumstances.

During 1993 and 1994 consideration of what became 1994 PA 264, Legislators heard a lot about the frequency with which foster children *still* languished in Foster Care for 3, 5, even 15 years, while parents made essentially no progress towards having a Permanent, safe or secure home for the children to return to, which caused the late addition of the language which is in MCL 712A.19B(5). This language was not in the original bill, it was added at the urging of then-Senator Jack Welborn and then-Representative (now-Probate Judge) Michael Nye. This language made achievement of Permanence by taking Permanent Custody mandatory if there were grounds for taking it and it was not clearly against the children's interest.

Under the Rule change, achieving Permanency for a child which has had some parents Terminated, and has other parents who are unknown, parents whose whereabouts are unknown, or parents who are in prison, would be impossible. Such children would be forced to continue in Foster care until emancipated: permanent Temporary Court Wards, contrary to the policy inherent in Statute.

With every good wish,

Sincerely,



Christopher D. Dingell
Third Circuit Judge